

Understanding Public School Residency Requirements

A G U I D E F O R A D V O C A T E S



Education Law Center



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ACKNOWLEDGEMENTS

Acknowledgments

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About the Education Law Center

Education Law Center (ELC) was established in 1973 to advocate on behalf of New Jersey's public school children for access to an equal and adequate education under state and federal laws. ELC works to improve educational opportunities for low-income students and students with disabilities, through public education, policy initiatives, research, communications, and when necessary, legal action.

ELC currently operates two projects to improve education for New Jersey's children: the Student Rights Project (SRP) and the Abbott Schools Initiative (ASI). SRP provides free legal representation to school children who are denied access to an adequate or appropriate public education. The types of cases accepted by SRP include: special education for children with disabilities, school discipline, school district admissions, and other violations of individual student rights. SRP is the only legal services program in New Jersey, and one of very few across the country, that specializes in education law.

The Abbott Schools Initiative (ASI) works to assure the full, effective, and timely implementation of the programs and reforms ordered by the New Jersey Supreme Court in the landmark *Abbott v. Burke* rulings. ELC represents the plaintiffs in the *Abbott* case—more than 350,000 preschool and school-age children in 31 urban school districts across the state. *Abbott* has been called “the most significant education case since the Supreme Court’s desegregation ruling nearly 50 years ago” (*NY Times*, 2002) and, along with *Brown v. Board of Education*, the most important court ruling in New Jersey in the 20th century (*NJ Lawyer*, 2000).

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INTRODUCTION

Parents, guardians, caregivers and school administrators will sometimes disagree over whether a student resides in a school district and can be enrolled in a district public school. The information in this manual is designed to help parents, guardians and caregivers understand the legal concepts involved in residency disputes, and to inform them of their legal rights. Effective December 17, 2001, for the first time, the New Jersey Department of Education adopted regulations governing the residency requirements for admitting students to public schools. Those regulations provide extensive procedural protections to ensure that students are not denied an education during residency disputes.

WHEN IS A STUDENT A “RESIDENT” FOR THE PURPOSES OF ENROLLMENT IN A DISTRICT’S PUBLIC SCHOOLS?

New Jersey law provides that public schools should be free to age-eligible¹ persons who are either: (a) “domiciled in the school district” or (b) living in the home of someone domiciled in the district, other than the parent or legal guardian, due to family or economic hardship.² If a student meets either of these requirements, then he or she is a “resident” of the school district and must be enrolled in the district’s public schools. A student whose parents are living temporarily in a school district, or who is living in the district while under guardianship of the New Jersey Division of Youth and Family Services (DYFS), is also eligible to be enrolled in the public schools of that district.³ If a court orders a student to be placed in the home of a district resident, that student is entitled to attend schools within the district.⁴ Any student residing on federal property within the state is also entitled to a free public education in the school district where the federal property is located or, if the federal property includes several districts, in a district designated by the county superintendent of schools.⁵ Special rules, discussed below, apply to students whose parent or guardian is in active service in the New Jersey National Guard or United States reserves during war or national emergency, and to students who reside in a residential state facility, or who have been placed in a school district by a state agency. Please note that additional, separate rules and rights apply when a student is homeless. See Education Law Center’s publication, *Education Rights of Homeless Students*.

DOMICILED IN THE SCHOOL DISTRICT

Under N.J.S.A. 18A:38-1(a), a student who is under the age of 18 is “domiciled” in a school district, and thereby entitled to attend school in the district, if his or her parent or legal guardian is “domiciled” in that district.⁶ A student who has reached the age of 18 may establish his or her own domicile.⁷ Domicile is the place where a person lives in his or her fixed, permanent home. This home must be the place to which he or she intends to return when he or she goes away, and from which he or she has no intention of moving anytime soon.⁸ A person can have only one “domicile” at a time,⁹ even if he or she has more than one home.

Legal Guardianship

A legal guardian is the person who has legal control of the student, either by virtue of being the parent of the student, or through a court custody order or guardianship proceeding before the county surrogate in accordance with N.J.S.A. 3B:12-52.¹⁰ If the student resides with an adult other than his or her parent, and that person has legal control of the student, either through a custody order or legal guardianship, then the school board must accept the student as domiciled, and may neither question the purpose of the custody order or guardianship,¹¹ nor require the completion of Affidavit Student proofs discussed in

this manual at pp. 5-6. In other words, if the non-parent caregiver has both physical and legal control of the student, the student must be considered domiciled in the district where the caregiver resides. On the other hand, in situations where a district resident has legal custody of a student, but there is evidence that the student does not actually live with the resident and instead resides out of the district, a school board may rightfully investigate whether the custody order is simply a pretext for getting the student enrolled in the district. If the school board determines that the custody order is a pretext, the student may be denied admission to school in accordance with the procedures discussed in this manual at pp. 9-11.¹²

If a student comes from outside the state and is living with a person domiciled in the district who will apply for legal guardianship of the student, the student is considered domiciled in the district where this person is domiciled.¹³ However, the application for legal guardianship must be made once the student has resided in New Jersey for six months.¹⁴ If the application for legal guardianship is not made within a reasonable time following the student's residence in the state for six months, then the student may be removed from the school district, under the procedures discussed at pp. 10-11 of this manual.¹⁵

In sum, if a student lives with a parent or legal guardian who is domiciled in a given school district, the student must be allowed to attend public school in that district.

Student Must Be Presently Domiciled in the District

The parent or guardian must be presently domiciled in the school district. If a family moves from a district, even at the end of a school year, the student no longer has the right to attend school in that district. Similarly, a parent or guardian's future intent to be domiciled in a district does not give a student the right to attend school within the district. For example, a family intends to purchase a new home and move into a new school district in November. In order to avoid disruption in their child's education, the family attempts to enroll the student in school in the new district at the start of the school year in September. That student has no statutory right to attend school in the new district, and may rightfully be denied admission. Parents and guardians seeking to enroll such a student, or to keep a student in a district's schools in order to complete a school year, should inquire with the board of education about the district's policy for admitting non-residents or about paying tuition for the period that the family is not actually domiciled in the district. Parents should be aware, however, that districts are not required to admit non-residents, and any policies relating to such admission are adopted at board discretion.

Emancipated Students

While generally the domicile of a person under the age of 18 is presumed to be the same as that of the parent or legal guardian, a student can establish a domicile apart from the parent or guardian if he or she is emancipated. An emancipated minor is one who lives completely independent of parental control and financial support.¹⁶ A student under the age of 18 who is attempting to establish a domicile separate and apart from his or her parent or guardian bears the burden of proving his or her independence.¹⁷ An emancipated student is domiciled in the school district where she or he has established a permanent home.¹⁸

Children of Divorced or Separated Parents

If a student's parents are divorced or separated and residing in different school districts, then one of the parent's districts must be chosen as the student's domicile. Where there is no court order or written agreement between divorced or separated parents designating a district for school attendance, the student is domiciled with the parent with whom the student resides for the majority of the school year, regardless of which parent has legal custody.¹⁹

"...if a student lives with a parent or legal guardian who is domiciled in a given school district, then the student must be allowed to attend public school in that district."

In situations where the student spends equal time with both parents and does not live with either one of the parents for the majority of the school year, and where there is no court order or written agreement designating the district for school attendance, the student's domicile is the present domicile of the parent with whom the student resided on the last school day prior to October 16th preceding the date of application for enrollment.²⁰ Thus, in the absence of a court order or written agreement designating the district for school attendance, a student spending equal time with both parents, who enrolls in school in September 2004, will be considered domiciled in the present school district of the parent with whom the student was residing on the last school day prior to October 16, 2003.

However, if the same student resided with both parents, or with neither parent, on the last school day before the preceding October 16th, the parents must indicate where the student will be residing on the last school day prior to the following October 16, and the domicile of the parent with whom the student will be residing then becomes the domicile of the student.²¹ For example, if the student lived with both parents throughout October 2003, but the parents subsequently separated and alternated physical custody equally, the district in which the student is entitled to attend school is the district of the parent with whom the student will be residing on the last school day prior to October 16, 2004. If the parents do not designate, or cannot agree on, the student's likely residence on the last school day prior to the next October 16th, or if on that date the student does not end up residing with the parent previously indicated, the student will attend school in the district where the parent, with whom he or she is actually living as of the last school day prior to October 16, is domiciled.²²

These rules also apply in situations where one of the student's parents temporarily resides in a district and the other is either domiciled or temporarily residing in another district.²³ In this particular case, a district may require a parent or legal guardian to demonstrate that this temporary residence is not solely for purposes of the student attending school within the district of temporary residence.²⁴

Please note that when transportation is required for a child whose parents are divorced or separated, the school district that is the district of domicile for school attendance purposes is only required to provide transportation based upon the home of the parent domiciled in the district.²⁵ Thus, even if the student alternates between his or her parents' homes, the student need only be transported to the home of the parent who lives in the district where the student attends school.

"It is... unlawful for a school board to deny admission to a student on the basis of the legal status or physical condition of his/her home."

"Illegal" Residence/Resident

The legal status or physical condition of a person's residence has no bearing on whether the person is domiciled within a district. A person may reside in a home which violates local zoning or housing laws, yet must be considered domiciled under New Jersey's school residency law if that dwelling is his or her fixed, permanent home. For instance, the commissioner of education found that year-long residency in a local campground in violation of zoning laws had no impact on the determination of domicile under New Jersey's school residency law.²⁶ It is therefore unlawful for a school board to deny admission to a student on the basis of the legal status or physical condition of his or her home.²⁷ It is also unlawful for a school board to require an applicant for admission to obtain a certificate of occupancy or inhabitancy from the local housing inspector.²⁸

Similarly, a student's immigration or visa status has no bearing on his or her right to attend school in a district.²⁹ The U.S. Supreme Court has ruled that it is unlawful for a school board to deny admission on the basis of alien status.³⁰ It is also unlawful for a school board to request or require an applicant for admission to present proof of lawful immigration status, or even a Social Security number.³¹ However, there is one limited exception. Students who have obtained or are seeking to obtain a Certificate of Eligibility for Nonimmigrant

Student Status (INS form I-20) from the district in order to apply for or seek an "F-1" visa, issued specifically for the purpose of limited study on a tuition basis in a United States postsecondary school, may not receive a free public education.³² For all other students, domicile and age are the only factors to determine eligibility for a free public education in a school district under N.J.S.A. 18A:38-1(a).

FAMILY OR ECONOMIC HARDSHIP

If, due to family or economic hardship, a student lives with a caregiver *who is not the parent or legal guardian*, the student can be enrolled in the public schools of the caregiver's district.³³ Under the Affidavit Student law, N.J.S.A. 18A:38-1(b), an age-eligible student can be enrolled in a district's public schools, even though not domiciled within the district, if the following conditions are met:

- (1) The student must be kept in the home of a person who is domiciled within the school district (the district resident);
- (2) The district resident must have agreed to assume all personal obligations for the child relative to school requirements;
- (3) The district resident must support the student *gratis* (meaning the district resident will not be paid for supporting the student);
- (4) The district resident must intend to keep and support the student for longer than a school year;
- (5) The parent or guardian with legal responsibility for the student is not capable of supporting or providing care for the child due to family or economic hardship; and
- (6) The student is not residing with the district resident solely to receive a free public education in the district resident's school district.³⁴

If all of these conditions are met, the student must be permitted to attend public school in the district resident's school district, and is not required to attend school in the district in which the student's parent or guardian resides. It is not necessary that the caregiver have legal custody or guardianship of the student, and it is wrong for the school district to insist that custody or guardianship be obtained.³⁵ In fact, if the caregiver has custody or guardianship, the student must be admitted to school as a domiciled student under N.J.S.A. 18A:38-1(a) (see discussion at p. 2 of this manual), and the school board cannot require the student to prove the criteria for an Affidavit Student.

To prove that the conditions for Affidavit Student status are met, the student's parent or guardian is required to file a sworn statement, known as an affidavit, with the secretary of the board of education in the district where the student is seeking to be enrolled.³⁶ Specifically, the parent or guardian must file a sworn statement, accompanied by documentation to support its validity, that he or she is not capable of supporting or providing care for the student due to family or economic hardship and that the student is not residing with the district resident solely for the purpose of receiving a free public education.³⁷

In addition, if required by the district board, the district resident keeping the student must file a sworn statement that he or she is domiciled within the district, is supporting the student without compensation and intends to do so for a longer time than the school term, and will assume all personal obligations for the student relative to school requirements.³⁸ If the district resident is a tenant, the district is allowed to request a copy of his or her lease or, if residing without a written lease, a sworn statement from the district resident's landlord.³⁹

*“...the
Affidavit
Student law
is... designed
to allow
students
facing family
and economic
hardship to
attend public
school in
the district
of their
caregiver.”*

If a board of education requires specific forms to prove Affidavit Student status, it must provide them to any non-parent attempting to register a student.⁴⁰

If an applicant is unable to obtain a sworn statement from the student's parent or guardian, but presents evidence that meets the residency requirements, a district may not deny a student admittance into a school simply because of the applicant's inability to obtain the sworn statement.⁴¹ It is also unlawful to deny a student admittance to school if evidence is presented that the student has no home or possibility of attending another school other than with the non-parent district resident, who is acting as sole caregiver and supporter of the student.⁴²

The Affidavit Student law is partly designed to prevent a parent or guardian from sending his or her child to live in another school district just so the child can get a better education. If the student is living away from his or her parent in another district **solely** for the purpose of attending school in the district, the student does not meet the criteria for admission. But the Affidavit Student law is also designed to allow students facing family or economic hardship to attend public school in the district of their caregiver. Examples of situations in which a student living with a caregiver, who is not the student's parent or legal guardian, attends public school in the caregiver's district might include the following cases of T and M.

- (1) T's father died, and her mother, who has mental retardation, is unable to care for her or financially support her. T's aunt, S, lives in another town and agrees to have T move in with her. S does not have legal custody of T, but she supports T and acts as her caregiver for longer than a school year. Because T is living with S due to family and economic hardship, T can attend public school in S's district.⁴³
- (2) M's stepmother is often violent and verbally abusive. M's father is concerned that M has to spend time alone with the stepmother, and convinces a close family friend, who lives in another school district, to care for M. The family friend allows M to live with her for free and for longer than a school year. Because M lives with the friend due to family hardship, M can attend the public schools in the friend's district.⁴⁴

One area of frequent confusion under the Affidavit Student law is the statutory requirement that a district resident support an Affidavit Student *gratis*. The regulations recognize that students remain eligible under the Affidavit Student law: 1) when the parent or legal guardian gives gifts or makes limited financial contributions towards the welfare of the student;⁴⁵ and 2) when the district resident receives Social Security or other similar benefits on behalf of the student.⁴⁶ The regulations do require, however, that the district resident not receive any payment or other remuneration from the parent or guardian for the student's regular maintenance, but do not explicitly address whether court-ordered child support payments can be considered such remuneration.⁴⁷ In *E.L. v. Morris Hills Regional School District Board of Education*,⁴⁸ an administrative law judge (ALJ) held that grandparents who received \$200 per month in child support payments on behalf of their granddaughter nonetheless supported her *gratis*. The ALJ reasoned that child support, like Social Security payments, does not compensate the grandparents for their services, but is intended for the direct benefit of the child. The ALJ interpreted the statutory *gratis* requirement to permit the payment of child support, finding that the Legislature could not have intended that a family hardship requiring a transfer of custody should absolve a natural parent of the absolute legal obligation to support his or her children.

Any person filing an affidavit with a board of education to enroll a student in school should be aware that there are penalties for filing a false affidavit. According to state law, a person is committing a disorderly persons offense if he or she: 1) fraudulently allows someone else's child to use his or her residence for enrollment in school when the person is not the primary financial supporter of the child; or 2) fraudulently claims that he or she

has given up custody of his or her child to someone in another school district.⁴⁹ In addition, a board of education has the right to collect tuition from a parent, guardian or caregiver when the board discovers that a student is attending school in a district where the student is not eligible for a free public education.⁵⁰

TEMPORARY RESIDENCE IN THE SCHOOL DISTRICT

Even if the parent or guardian of a student is not domiciled in a school district, but is living in that district temporarily, the student has the right to go to school in that district.⁵¹ This means that a student has the right to go to school in the district where his or her parent or legal guardian is residing, whether the parent or guardian's home is a temporary or permanent one. A district, however, may require a parent or legal guardian to demonstrate that this temporary residence is not designed solely to allow the student to attend school within the district of temporary residence.⁵² Once a student and his or her parent or guardian have lived in a district for one year or more, they are considered to be domiciled within the district for the purposes of school enrollment.⁵³

STUDENTS UNDER THE GUARDIANSHIP OF DYFS OR PLACED BY A STATE AGENCY

If a student is under the guardianship of the New Jersey Division of Youth and Family Services (DYFS), and DYFS places the student in foster care or a group home in a school district, that district is required to enroll the student.⁵⁴ So, a student is a resident of the district where he or she is living while under DYFS guardianship. If a student is in a residential state facility, or has been placed by a state agency (other than DYFS) in a group home, private school or out-of-state facility, although the student must be permitted to attend school in the district where he or she resides, the present school district of the parent or guardian with whom the student lived prior to the most recent placement is responsible for the cost of the student's education.⁵⁵ If the district with financial responsibility cannot be determined, or if the student's parent or guardian resides outside the state, the state of New Jersey must assume financial responsibility for the student's tuition at a public school.⁵⁶

RESIDENCE WITHIN TWO OR MORE SCHOOL DISTRICTS

If a student's home is physically located within two or more local school districts, the municipality that receives the majority of the property tax paid by the resident or the owner of a multi-unit dwelling is the district of domicile.⁵⁷ This rule also applies to a dwelling that bears a mailing address that does not reflect its physical location within a municipality.⁵⁸ When property taxes are paid in equal amounts to two or more municipalities, and when there is no established assignment for the students of those affected dwellings, the district of domicile will be determined through an assessment of individual proofs, as discussed in this manual at p. 8.⁵⁹

STUDENTS OF PARENTS CALLED TO ACTIVE MILITARY SERVICE

A student, whose parent is a reservist of the United States armed forces or a member of the New Jersey National Guard ordered to active military service in the time of war or national emergency, may attend school in one of two districts. The student may attend school in the district of the person with whom the student is residing while his or her parent is away.⁶⁰ If the student chooses to do so, he or she may continue in that school until the end of the current school year in which the parent or legal guardian returns from active military duty.⁶¹ Alternatively, the student may remain in school in the district where he or she lived with the parent or legal guardian before the parent or legal guardian was ordered to active service, even if the student is living in another district while his or her parent is away.⁶²

WHAT RIGHTS PROTECT A STUDENT IN A RESIDENCY DISPUTE?

First and foremost, the student, and his or her parent, guardian or caregiver, have a right to *due process*. The Fourteenth Amendment of the U.S. Constitution provides that no state shall “deprive any person of... property without due process of law.” Every student has a legally recognized property interest in receiving a public education.⁶³ Any denial of public education must be done according to minimal due process.⁶⁴

Minimal due process includes: (1) adequate written notice that explains why the school district will not admit a student to its schools; (2) notice of the student’s right to a hearing; and (3) meaningful opportunity for a hearing.⁶⁵ A student is also entitled to information about how to file an appeal of the school board’s denial of admission and notice that he or she may attend school in the district pending an appeal.⁶⁶

RIGHTS OF STUDENTS APPLYING FOR ADMISSION TO THE DISTRICT

Proof of Eligibility

To determine a student’s eligibility for enrollment in the district, a district board of education is authorized to request documentation of domicile, residency, or Affidavit Student status. Acceptable forms of documentation include, but are not limited to, the following: property tax bills, mortgages, signed letters from landlords, voter registrations, licenses, permits, utility bills, court orders, receipts, bills, medical reports, employment documents, affidavits, and documents pertaining to military status or assignment.⁶⁷ A district must consider any documents or information presented by an applicant (parent, legal guardian, or caregiver) seeking to enroll a student.⁶⁸ A district may not deny a student enrollment due to a person’s inability or failure to produce a particular document or subset of documents, but instead must consider the totality of the information submitted by the applicant.⁶⁹

It is unlawful for a district to require or request as a condition of enrollment in school, information or documents protected from disclosure by law or pertaining to criteria that are not legitimate for determining eligibility to attend school.⁷⁰ These documents include (1) income tax returns; (2) documentation or information relating to citizenship or immigration/visa status (except F-1 visas); (3) documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and (4) Social Security numbers.⁷¹

A district cannot deny a student enrollment or attendance based upon absence of a certified copy of a birth certificate or other proof of a student’s identity, which state statute requires to be provided within 30 days of enrollment.⁷² Also, a district cannot deny

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enrollment or attendance because a student's prior educational record is not immediately produced,⁷³ although the student may be subject to a change in educational placement after the district has received and assessed the student's educational record.⁷⁴ A district may not deny a student enrollment in the district due to lack of student medical information.⁷⁵ A school may, however, defer actual attendance of a student for not complying with immunization rules.⁷⁶

Initial Assessment and Enrollment

When seeking enrollment of a child, the parent, legal guardian or caregiver should contact the district board of education to determine in what local school the student should be enrolled and where in the district enrollment takes place. Each district must have sufficient registration forms and sufficient numbers of trained registration staff available to ensure prompt determinations of eligibility and enrollment.⁷⁷ Registration forms must comply with those distributed by the commissioner.⁷⁸ (See Appendix in this manual.) Each district must also have a clearly identified district-level school administrator available to assist applicants experiencing difficulties with the enrollment process.⁷⁹

A district, through its forms, must be very clear on the requirements the applicant must satisfy in order to successfully enroll a child. A summary of the statutory criteria for enrollment must be provided, along with the nature and form of any required sworn statement.⁸⁰ If any information is requested, the district must state the purpose for requesting the information.⁸¹ It is unlawful for the district, through its registration forms, to seek information that is prohibited by law.⁸²

When an applicant, who is not a parent or legal guardian, is attempting to register a student, the district must provide the applicant with the Affidavit Student forms, if different from the other registration forms, whether or not they are specifically requested.⁸³ A district or its agents cannot demand or suggest that legal guardianship or custody must be obtained before considering a student's eligibility for enrollment.⁸⁴ The district cannot demand or suggest to applicants who have legal guardianship or custody of a student that Affidavit Student proofs be produced as a condition of enrollment.⁸⁵

Once an application for enrollment is submitted, the district must make an immediate initial determination of eligibility.⁸⁶ Enrollment must take place immediately in virtually all cases, even when an applicant has provided incomplete, unclear or questionable information.⁸⁷ The only exception to immediate enrollment is when the applicant is clearly ineligible and the applicant does not contest the district's denial of eligibility.⁸⁸

If a student is ineligible based on the information provided in the initial application, the district must immediately provide a preliminary written notice of ineligibility to the applicant, including an explanation of the right to appeal to the commissioner within 21 days.⁸⁹ See discussion of Notice of Ineligibility on p. 10 of this manual. If the applicant disagrees with the district's initial determination of ineligibility, and clearly indicates to the district his or her disagreement and intent to appeal to the commissioner, the student must be enrolled and permitted to attend public school in the district denying admission during the 21-day period when an appeal may be filed and, if an appeal is filed, until the commissioner holds a hearing and makes a final decision in the case.⁹⁰ The school district shall not condition enrollment or attendance at school on advance payment of tuition in whole or in part.⁹¹ The applicant must be notified that if he or she does not correct the defects in his or her application or file an appeal within 21 days, the enrolled student can be removed without a hearing.⁹²

Any information that an applicant may be homeless must be identified during the registration process, so that the additional rules governing the education of homeless children may be applied.⁹³ See Education Law Center's publication, *Education Rights of Homeless Students*.

"Once an application for enrollment is submitted, the district must make an immediate initial determination of eligibility. Enrollment must take place immediately in virtually all cases...."

Notice of Ineligibility

If a district decides that a student is ineligible to attend schools in that district, or if the district finds that an application is incomplete, the district must immediately provide the applicant with a notice of ineligibility. The school district's chief administrator must provide the notice in writing, both in English and in the native language of the applicant.⁹⁴ Notice of ineligibility shall include a clear description stating the reasons and the statutory basis for the student being denied admission, or in the case of an incomplete application, a clear description of the missing documents or information that must be provided.⁹⁵ The district must also provide the applicant with the name of a contact person in the school district who can assist in explaining the contents of the notice.⁹⁶

In addition, the notice of ineligibility must include the following: a clear statement of the applicant's right to appeal to the commissioner within 21 days of the date of the notice;⁹⁷ a clear statement of the student's right to attend school during the 21-day period during which an appeal to the commissioner can be made;⁹⁸ a clear statement that the student will not be permitted to attend school beyond the 21st day following the date of the notice if missing information is not provided or an appeal is not filed;⁹⁹ a clear statement of the student's right to attend school while an appeal to the commissioner is pending;¹⁰⁰ a clear statement that the applicant may be assessed tuition for any period of ineligible attendance if the applicant loses or abandons his or her appeal;¹⁰¹ a clear statement of the approximate rate of tuition that may be assessed;¹⁰² and notice regarding compliance with the state's compulsory education laws.¹⁰³ A copy of the New Jersey Department of Education's informational document on how to file an appeal must be included with the district's written notice.¹⁰⁴ (See Appendix in this manual.)

Finally, if a determination of ineligibility is based on a student having moved from the district, the notice must provide information on the district's policy for continued attendance, with or without tuition, for students who move from the district during the course of the school year.¹⁰⁵

Compliance with State's Compulsory Education Law

Districts are responsible for advising applicants who have no intent to appeal a denial of enrollment that they must still comply with compulsory education laws.¹⁰⁶ These laws, also referred to as truancy laws, require the parent, guardian or caregiver of a child between the ages of six and 16 to ensure that the child regularly attends school, or be brought to court and fined for failure to comply.¹⁰⁷ In the absence of a written statement from the parent or legal guardian that the student will be attending school or receiving instruction elsewhere, the district, through designated staff, must contact the school district of actual domicile or residence, or DYFS.¹⁰⁸ The district must provide the other school district or DYFS with (1) the student's name, (2) the name(s) of the parent, legal guardian or district resident, (3) address, if known, (4) notice of the denial of admission to the district based on residency or domicile, and (5) notice of the absence of evidence of intent to attend school or receive instruction elsewhere.¹⁰⁹

RIGHTS OF STUDENTS CURRENTLY ATTENDING SCHOOL IN THE DISTRICT

The district board of education has the right to investigate a currently enrolled student's residency status or to make periodic requests for current validation of a student's eligibility status.¹¹⁰ If a student is already registered and attending school in a district that disputes the student's residency and seeks to remove the student from its schools, then no one person, such as a superintendent or principal, can end a student's enrollment in the district.¹¹¹ Instead, the superintendent or principal must apply to the full board of education for

removal of the child, and the parent, guardian, or caregiver (in the case of an Affidavit Student) is then entitled to a hearing before the board of education.¹¹² The district must provide the parent, guardian, or caregiver written notice prior to the hearing that: (1) states the specific reasons that the district is challenging the student's residency; and (2) meets all other notice requirements discussed in this manual at p. 10.¹¹³

At the board hearing, the student's parent, guardian, or caregiver will be given the opportunity to prove that the student is either domiciled in the district (see Domiciled in the District section of this manual), meets the requirements of an Affidavit Student (see Family or Economic Hardship section of this manual), or has some other legal entitlement to attend school in the district (see pp. 2 and 7). The student and parent, guardian, or caregiver should bring to the hearing any witnesses who can testify about their residency or about the student's family or economic hardship. They should also bring any documents that support the claim that the student is entitled to a free public education in the district (such as a lease or a deed to prove residency, or documents supporting a claim of family or economic hardship).

Once the hearing is held, or if the parent, guardian or caregiver fails to appear at the hearing, the district board must make a prompt determination of the student's eligibility or ineligibility and provide written notice of the decision to the parent, guardian or caregiver, in accordance with the notice requirements discussed in this manual at p. 10.¹¹⁴ The district board may conduct the hearing before a committee of the board, rather than the full board.¹¹⁵ However, no student may be removed from a district without the vote of the full board at a public board meeting.¹¹⁶

If the board of education finds that a student is not domiciled in the district, is not an Affidavit Student, and is not otherwise legally entitled to a free public education in the district, it can order that the student be removed from school and prohibited from attending school in its district. However, the district must provide written notice of the board's determination that complies with the notice requirements set forth in this manual on p. 10 and includes information on how to file an appeal.¹¹⁷ The district must also wait 21 days from the board's decision before removing the child from school.¹¹⁸ During that period, the parent or guardian—or the caregiver/district resident in an Affidavit Student dispute—has the right to appeal the board of education's decision to the commissioner on behalf of the student and on his or her own behalf (see How to File an Appeal section of this manual). If an appeal is filed against the ruling of a school district's board of education, the student must be permitted to attend public school in that district until the commissioner holds a hearing and makes a final decision in the case.¹¹⁹ As discussed in this manual on p. 13, a parent, guardian or caregiver who loses an appeal may be assessed tuition for the student's period of ineligible attendance at school.

*"...no student
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a district
without the
vote of the
full board
at a public
board
meeting."*

"All appeals of school residency decisions must be filed with the commissioner within 21 days of the date of a board of education's decision."

A parent, guardian, adult student or caregiver/district resident has the right to appeal to the commissioner any board of education decision denying a student admission or removing a student on residency grounds.¹²⁰ However, when the appeal challenges a board of education's Affidavit Student eligibility determination, the caregiver/district resident must file the appeal.¹²¹ All appeals of school residency decisions must be filed with the commissioner within 21 days of the date of a board of education's decision.

There are two ways in which an appeal to the commissioner may be initiated: (1) by filing and serving a Petition of Appeal in accordance with N.J.A.C. 6A:3-1.3 and 1.4; or (2) in the case of someone acting without legal representation (a "*pro se* petitioner"), by submitting a letter petition in accordance with N.J.A.C. 6A:3-8.1.

Petitions in letter form will be accepted by *pro se* petitioners, as long as they contain the following information:

1. The name, address, telephone number, and fax number, where available, of the person filing the appeal (known as the "petitioner");
2. The name of the board of education of the district that has denied admission to, or removed a student from, school (known as the "respondent");
3. A clear indication that the petitioner is appealing a determination of ineligibility to attend school in the district based upon residency or domicile, together with the date of the district's decision; and
4. A signed statement that the claim of entitlement is based upon facts that are true to the best of the petitioner's knowledge and belief.¹²²

Where possible, a copy of the district's written determination of ineligibility should be attached to this letter petition. A letter petition form prepared by the New Jersey Department of Education is included in the Appendix of this manual.

To file the appeal, the letter petition must be submitted to the commissioner at the following address:

Commissioner of Education
c/o Director of Bureau of Controversies and Disputes
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

To speed up filing, a copy of the papers may be sent by facsimile transmission to the Department of Education at fax number (609) 292-4333, but a hard copy must also be sent by mail. The Bureau of Controversies and Disputes within the Department of Education can be reached by telephone at (609) 292-5705 to answer questions about filing. See the Department of Education's "Directions For Appealing A Local Board's Residency Determination to the Commissioner of Education" within the Appendix of this manual.

It is not necessary for a *pro se* petitioner to serve a copy of the letter petition on the respondent board of education, but he or she may do so.¹²³ Upon receiving a letter petition, the Bureau of Controversies and Disputes will fax a copy to the board, with a notice directing the board that the child or children must be admitted to school pending the appeal.¹²⁴

If the board has not already done so, it must admit the child(ren) to school immediately. The board will then have 20 days from the date of receipt to respond to the petition. Once the board's answer is served on the petitioner and filed with the commissioner, the case will be scheduled for a hearing before an administrative law judge, who makes an initial decision. The case then goes to the commissioner for a final decision.

When a claim goes before the administrative law judge and the commissioner, there are a few things the petitioner (parent, guardian, or caregiver) should know: (1) The petitioner

will be responsible for proving that the student is eligible for a free public education in the district;¹²⁵ (2) if the commissioner decides the case in the petitioner's favor, the student can attend public school in the district until graduation, provided he or she continues to meet the legal requirements for residency. If the student is an Affidavit Student, the board of education may require the parent, guardian, or caregiver to provide statements every year, to prove that the student's family or economic circumstances are unchanged; and (3) if the commissioner decides against the petitioner or if the petitioner withdraws from the appeal process, the petitioner could be liable to pay "tuition" to a school district for the time the student attended public school there.¹²⁶ Tuition is calculated on a per student basis for the period of a student's ineligible enrollment, based on the student's grade and program category and consistent with the provisions of N.J.A.C. 6A: 23-3.1.¹²⁷ For example, if a district spends \$10,000 per student each 180-day school year, and a student is enrolled in public school for 90 school days while a case is pending, if the case is lost, the parent, guardian, or caregiver could be required to pay \$5,000 to the district. The student's record of daily attendance does not affect the calculations.¹²⁸

A board can collect tuition from a parent or guardian, or from a caregiver who resides in the district, for any period of ineligible attendance.¹²⁹ This includes the 21-day period for the filing of an appeal, if the student is enrolled during that period.¹³⁰ Although tuition is generally assessed for any period of ineligible attendance, the commissioner or board of education does have the authority to make an equitable determination that tuition for ineligible attendance should not be assessed under particular circumstances.¹³¹

"A board can collect tuition from a parent or guardian, or from a caregiver who resides in the district, for any period of ineligible attendance."

1. Persons who are eligible for a free public education include all students between the ages of five and 20, N.J.S.A. 18A:38-1, students with disabilities between the ages of three and 21, N.J.A.C. 6A:14-1.1(c)(1), and all three and four-year-old students residing in Abbott districts, N.J.A.C. 6A:10A-2.2(a)(1).
2. N.J.S.A. 18A:38-1(a) and (b).
3. N.J.S.A. 18A:38-1(d) and (e).
4. N.J.A.C. 6A:22-3.2(e).
5. N.J.S.A. 18A:38-7.7 *et seq.*; N.J.A.C. 6A:22-3.2(g).
6. *Somerville Board of Education v. Manville Board of Education*, 332 N.J. Super. 6, 12 (App. Div. 2001), *aff'd*, 167 N.J. 55 (2001).
7. N.J.A.C. 6A:22-3.1(a)(2).
8. N.J.A.C. 6A:22-3.1(a)(1). *See Matter of Unanue*, 255 N.J. Super. 362, 374 (1991); *Lyon v. Glaser*, 60 N.J. 259, 264 (1972); *Kurilla v. Roth*, 132 N.J.L. 213, 215 (Sup. Ct. 1944).
9. *In re Estate of Gilmore*, 101 N.J. Super. 77, 87 (App. Div.), *certif. denied*, 52 N.J. 175 (1968).
10. *See J.P. v. Greenbrook Township Board of Education*, 97 N.J.A.R.2d (EDU) 83; *Mansfield Township v. State Board of Education*, 101 N.J.L. 474, 479 (Sup. Ct. 1925).
11. *L.A. v. West Orange Board of Education*, 97 N.J.A.R.2d (EDU) 267; *V.H. v. Township of Quinton Board of Education*, 97 N.J.A.R. 2d (EDU) 124; N.J.A.C. 6A:22-4.1(b)(1).
12. *Cranford Township Board of Education v. M.C.G.*, 95 N.J.A.R.2d (EDU) 74.
13. N.J.A.C. 6A:22-3.1(a)(3).
14. N.J.A.C. 6A:22-3.1(a)(3); *see also* N.J.S.A. 2A:34-30(e), N.J.S.A. 2A:34-31.
15. N.J.A.C. 6A:22-3.1(a)(3).
16. *Schumm v. Schumm*, 122 N.J. Super. 146 (Ch. Div. 1973).
17. *Newburgh v. Arrigo*, 88 N.J. 529, 543 (1982); *Alford v. Somerset County Welfare Board*, 158 N.J. Super. 302 (App. Div. 1978).
18. N.J.A.C. 6A:22-3.1(a)(2).
19. N.J.A.C. 6A:22-3.1(a)(1)(i).
20. N.J.A.C. 6A:22-3.1(a)(1)(ii).
21. N.J.A.C. 6A:22-3.1(a)(1)(ii)(1).
22. N.J.A.C. 6A:22-3.1(a)(1)(ii)(1).
23. N.J.A.C. 6A:22-3.2(c)(2).
24. N.J.A.C. 6A:22-3.2(c)(2).
25. N.J.A.C. 6A:22-3.1(a)(1)(ii)(2).
26. *Board of Education of Township of Middle v. K.K.*, 93 N.J.A.R. 2d (EDU) 461.
27. N.J.A.C. 6A:22-3.3(a).
28. N.J.A.C. 6A:22-3.4(d)(3).
29. N.J.A.C. 6A:22-3.3(b).
30. *Plyler v. Doe*, 457 U.S. 202 (1982); *see also I.C. v. Board of Education of Paterson*, 1983 S.L.D. 218.
31. N.J.A.C. 6A:22-3.4(d)(2) and (4).
32. N.J.A.C. 6A:22-3.3(b)(1).
33. N.J.S.A. 18A: 38-1(b); N.J.A.C. 6A:22-3.2(a).
34. N.J.A.C. 6A:22-3.2(a).
35. N.J.A.C. 6A:22-4.1(b)(1).
36. N.J.A.C. 6A:22-3.2(a)(1)(i).
37. N.J.A.C. 6A:22-3.2(a)(1)(i).
38. N.J.A.C. 6A:22-3.2(a)(1)(ii)(1).
39. N.J.A.C. 6A:22-3.2(a)(1)(ii)(2).
40. N.J.A.C. 6A:22-4.1(b)(1).

41. N.J.A.C. 6A:22-3.2(a)(2); *see also Gunderson v. Board of Education of Brigantine*, 95 N.J.A.R. 2d (EDU) 39.
42. N.J.A.C. 6A:22-3.2(a)(3); *see also Gunderson v. Board of Education of Brigantine*, 95 N.J.A.R. 2d (EDU) 39.
43. *See J.A. v. Board of Education for South Orange and Maplewood*, 318 N.J. Super. 512 (App. Div. 1999).
44. *See, e.g., Y.I.S. v. Board of Education of Northern Valley Regional High School*, OAL Dkt. No. EDU 10964-97, *aff'd by Commissioner* January 28, 2002, *aff'd by State Bd.* May 1, 2002 (separation of parents, relocation of mother to Korea, and long working hours of father constitute family hardship); *R.C.P. v. Ramapo-Indian Hills Regional High School District Board of Education*. OAL Dkt. No. EDU 11002-99, *aff'd by Commissioner* August 18, 2000, *aff'd by State Bd.* January 3, 2001 (inability of Korean family to move to United States to provide U.S.-born son with privileges of American citizenship constitutes family hardship, qualifying student to enrollment in uncle's school district); *G.L. v. Board of Education of Holmdel*, 97 N.J.A.R. 2d (EDU) 643, 647 (children residing with uncle in local school district while their parents, living in Taiwan, attempted to emigrate to United States, met affidavit student criteria as "time consuming and difficult" process of emigrating constituted family and economic hardship); *J.B. v. Board of Education of Township of Ocean*, 96 N.J.A.R. 2d (EDU) 628 (family discord between teen-aged boy and parents constitutes family hardship entitling student to affidavit student status in his grandmother's school district); and *Gunderson v. Board of Education of Brigantine*, 95 N.J.A.R. 2d (EDU) 39, (requiring education for child whose living arrangements may not be as contemplated by the statute when it is clear that child has no home, or possibility of school attendance, other than with non-parent district resident).
45. N.J.A.C. 6A:22-3.2(a)(4).
46. N.J.A.C. 6A:22-3.2(a)(4)(i).
47. N.J.A.C. 6A:22-3.2(a)(4).
48. OAL Dkt. No. EDU 3172-97, *aff'd by Commissioner* February 15, 2000.
49. N.J.S.A. 18A:38-1(c); N.J.A.C. 6A:22-3.2(a)(5).
50. N.J.S.A. 18A:38-1(b).
51. N.J.S.A. 18A:38-1(d).
52. N.J.A.C. 6A:22-3.2(c)(1).
53. N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:22-3.1(a)(4).
54. N.J.S.A. 18A:38-1(e); N.J.A.C. 6A:22-3.1(a)(5).
55. N.J.S.A. 18A:7B-12(b).
56. N.J.S.A. 18A:7B-12(d).
57. N.J.A.C. 6A:22-3.1(b).
58. N.J.A.C. 6A:22-3.1(b).
59. N.J.A.C. 6A:22-3.1(b)(1).
60. N.J.A.C. 6A:22-3.2(b).
61. N.J.A.C. 6A:22-3.2(b)(1).
62. N.J.A.C. 6A:22-3.2(f).
63. *See N.J. Const. art. VIII, § IV Para. 1.*
64. *See J.A. v. Board of Education for South Orange and Maplewood*, 318 N.J. Super. 512, 523 (App. Div. 1999) (holding that because public education is a property right for all age-eligible children, a board of education decision excluding someone with a good faith claim to attend school is subject to the requirements of procedural due process).

65. *J.A. v. Board of Education for South Orange and Maplewood*, 318 N.J. Super. 512, 524 (App. Div. 1999); *see also Goss v. Lopez*, 419 U.S. 565, 581 (1975).
66. *J.A. v. Board of Education for South Orange and Maplewood*, 318 N.J. Super. 512, 525-526 (App. Div. 1999).
67. N.J.A.C. 6A:22-3.4(a).
68. N.J.A.C. 6A:22-3.4(b).
69. N.J.A.C. 6A:22-3.4(c).
70. N.J.A.C. 6A:22-3.4(d).
71. N.J.A.C. 6A:22-3.4(d).
72. N.J.S.A. 18A:36-25.1; N.J.A.C. 6A:22-4.1(g).
73. N.J.A.C. 6A:22-4.1(i).
74. N.J.A.C. 6A:22-4.1(i).
75. N.J.A.C. 6A:22-4.1(h).
76. N.J.A.C. 6A:22-4.1(h).
77. N.J.A.C. 6A:22-4.1(a); N.J.A.C. 6A:22-4.1(b).
78. N.J.A.C. 6A:22-4.1(a) and (b).
79. N.J.A.C. 6A:22-4.1(b)(2).
80. N.J.A.C. 6A:22-4.1(a)(3).
81. N.J.A.C. 6A:22-4.1(a)(4).
82. N.J.A.C. 6A:22-4.1(a)(2).
83. N.J.A.C. 6A:22-4.1(b)(1).
84. N.J.A.C. 6A:22-4.1(b)(1).
85. N.J.A.C. 6A:22-4.1(b)(1).
86. N.J.A.C. 6A:22-4.1(c).
87. N.J.A.C. 6A:22-4.1(c).
88. N.J.A.C. 6A:22-4.1(c).
89. N.J.S.A. 18A:38-b(1); N.J.A.C. 6A:22-4.1(c).
90. N.J.S.A. 18A:38-1(b)(1); N.J.A.C. 6A:22-4.1(c).
91. N.J.A.C. 6A:22-4.1(e).
92. N.J.A.C. 6A:22-4.1(c)(2)(i).
93. N.J.A.C. 6A:22-4.1(f).
94. N.J.A.C. 6A:22-4.2(a)(1).
95. N.J.A.C. 6A:22-4.2(b).
96. N.J.A.C. 6A:22-4.2.
97. N.J.A.C. 6A:22-4.2(b)(3).
98. N.J.A.C. 6A:22-4.2(b)(4).
99. N.J.A.C. 6A:22-4.2(b)(4).
100. N.J.A.C. 6A:22-4.2(b)(5).
101. N.J.A.C. 6A:22-4.2(b)(6).
102. N.J.A.C. 6A:22-4.2(b)(7).
103. N.J.A.C. 6A:22-4.2(b)(9).
104. N.J.A.C. 6A:22-4.2(b)(3).
105. N.J.A.C. 6A:22-4.2(b)(7)(i).
106. N.J.A.C. 6A:22-4.1(d).
107. N.J.S.A. 18A:38-25 *et seq.*
108. N.J.A.C. 6A:22-4.1(d).
109. N.J.A.C. 6A:22-4.1(d).
110. N.J.A.C. 6A:22-4.3(a).
111. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3(e).
112. N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3(b) and (c).

113. N.J.A.C. 6A:22-4.3(b)(1).
114. N.J.A.C. 6A:22-4.3(d).
115. N.J.A.C. 6A:22-4.3(e).
116. N.J.A.C. 6A:22-4.3(e).
117. N.J.A.C. 6A:22-4.3(d); *see also J.A. v. Board of Education for South Orange and Maplewood*, 318 N.J. Super. 512, 524-526 (App. Div. 1999).
118. N.J.A.C. 6A:22-4.2(b)(4).
119. N.J.S.A. 18A:38-1(b)(2).
120. *See* N.J.A.C. 6A:22-5.1.
121. N.J.A.C. 6A:22-5.1(a).
122. N.J.A.C. 6A:3-8.1(a)(1).
123. N.J.A.C. 6A:3-8.1(a)(2).
124. N.J.A.C. 6A:3-8.1(a)(2).
125. N.J.S.A. 18A:38-1(b)(1) and (2).
126. N.J.S.A. 18A:38-1(b)(1) and (2); N.J.A.C. 6A:28-2.10(b).
127. N.J.A.C. 6A:22-6.3(a).
128. N.J.A.C. 6A:22-6.3(a).
129. N.J.S.A. 18A:38-1(b)(1) and (2); *see also* N.J.A.C. 6A:22-6.1(a).
130. N.J.A.C. 6A:22-6.1(a).
131. N.J.A.C. 6A:22-6.3(b); *see also Board of Education of Absecon, Atlantic County v. M.L.G.*, OAL Dkt. No. EDU 10944-99, rev'd by Commissioner July 13, 2000 (excusing payment of tuition during period prior to district resident obtaining legal custody of student where district resident was sole physical custodian of child and there was no evidence that child was residing with district resident solely to attend school in district).

The following Appendix consists of sample forms, notices, and informational documents created by the New Jersey Department of Education.

The contents of this Appendix are available on the Department's website at
<http://www.nj.gov/njded/code/current/title6a/chap22sample.pdf>

APPENDIX

ATTENDANCE AT SCHOOL BASED ON DOMICILE OR RESIDENCY IN THE SCHOOL DISTRICT: SAMPLE FORMS, NOTICES AND INFORMATIONAL DOCUMENTS

The Department of Education has developed the following package of sample forms, notices and informational materials to facilitate implementation of the laws governing a student's right to attend public school based on domicile or residency in a school district. The package is intended to aid in the understanding of the rights and responsibilities of districts, and of persons seeking to enroll students in school, under N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22.

Included are:

- Preliminary Information and Registration Form
(N.J.A.C. 6A:22-4.1)
- Notices of Ineligibility (N.J.A.C. 6A:22-4.2)
- Statement of Compliance with Compulsory Education Law (N.J.A.C. 6A:22-4.1/2)
- Instructions for Commissioner Appeal, including *Pro Se* Form
(N.J.A.C. 6A:22-5.1)

Use of the registration form and ineligibility notices included in this package is *not* required. HOWEVER, any locally developed registration form MUST include the preliminary information found on pages 2-3, and may NOT request information of the type prohibited by N.J.A.C. 6A:22-3.4(d). Additionally, any locally developed notice of ineligibility MUST comply with the requirements of N.J.A.C. 6A:22-4.2.

PRELIMINARY INFORMATION: PLEASE READ BEFORE PROCEEDING

The questions asked in the following pages will enable us to determine your student's eligibility to attend school in this district in accordance with New Jersey law. Please be aware that N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 require that a free public education will be provided to students between the ages of 5 and 20, and to certain students under 5 and over 20 as specified in other applicable law, who are:

- Domiciled in the district, i.e., living with a parent or guardian whose permanent home is located within the district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.
- Living with a person, other than the parent or guardian, who is domiciled in the district and is supporting the student without compensation, as if the student were his or her own child, because the parent cannot support the child due to family or economic hardship.
- Living with a person domiciled in the district, other than the parent or guardian, where the parent/guardian is a member of the New Jersey National Guard or the reserve component of the U.S. armed forces and has been ordered into active military service in the U.S. armed forces in time of war or national emergency.
- Living with a parent or guardian who is temporarily residing in the district.
- The child of a parent or guardian who moves to another district as the result of being homeless.
- Placed in the home of a district resident by court order pursuant to *N.J.S.A. 18A:38-2*.
- The child of a parent or guardian who previously resided in the district but is a member of the New Jersey National Guard or the United States reserves and has been ordered to active service in time of war or national emergency pursuant to *N.J.S.A. 18A:38-3(b)*.
- Residing on federal property within the State pursuant to *N.J.S.A. 18A:38-7.7 et seq.*

Note that the following do not affect a student's eligibility to enroll in school:

- Physical condition of housing or compliance with local housing ordinances or terms of lease.
- Immigration/visa status, except for students holding or seeking a visa (F-1) issued specifically for the purpose of limited study on a tuition basis in a United States public secondary school.
- Absence of a certified copy of birth certificate or other proof of a student's identity, although these must be provided within 30 days of initial enrollment, pursuant to *N.J.S.A. 18A:36-25.1*.
- Absence of student medical information, although actual attendance at school may be deferred as necessary in compliance with rules regarding immunization of students, *N.J.A.C. 8:57-4.1 et seq.*
- Absence of a student's prior educational record, although the initial educational placement of the student may be subject to revision upon receipt of records or further assessment by the district.

The following forms of documentation may demonstrate a student's eligibility for enrollment in the district. Particular documentation necessary to demonstrate eligibility under specific provisions in law will be indicated in the appropriate section of the registration form.

- Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency.
- Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency.
- Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location.
- Court orders, state agency agreements and other evidence of court or agency placements or directives.
- Receipts, bills, cancelled checks and other evidence of expenditures demonstrating personal attachment to a particular location, or, where applicable, to support of the student.
- Medical reports, counselor or social worker assessments, employment documents, benefit statements, and other evidence of circumstances demonstrating, where applicable, family or economic hardship, or temporary residency.
- Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, legal guardian, person keeping an “affidavit student,” adult student, person(s) with whom a family is living, or others, as appropriate.
- Documents pertaining to military status and assignment.
- Any business record or document issued by a governmental entity.
- Any other form of documentation relevant to demonstrating entitlement to attend school.

The totality of information and documentation you offer will be considered in evaluating an application, and, unless expressly required by law, the student will not be denied enrollment based on your inability to provide certain form(s) of documentation where other acceptable evidence is presented.

You will *not* be asked for any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school. You may *voluntarily* disclose any document or information you believe will help establish that the student meets the requirements of law for entitlement to attend school in the district, but *we may not, directly or indirectly, require or request*:

- Income tax returns;
- Documentation or information relating to citizenship or immigration/visa status, unless the student holds or is applying for an F-1 visa;
- Documentation or information relating to compliance with local housing ordinances or conditions of tenancy;
- Social security numbers.

Please be aware that any initial determination of the student's eligibility to attend school in this district is subject to more thorough review and subsequent re-evaluation, and that tuition may be assessed in the event that an initially admitted student is later found ineligible. If your student is found ineligible, now or later, you will be provided the reasons for our decision and instructions on how to appeal.

[Optional note if district permits attendance by nonresidents on a tuition basis: state law allows school districts to admit nonresident students, through policies adopted at board discretion, on a tuition basis. If your student is not eligible to attend school in this district free of charge, he or she may enroll on a tuition basis by... (instructions on how to obtain more information, or register for enrollment as a nonresident student.)]

***If you experience difficulties with the enrollment process, please see
(name and phone number/location of administrator) for assistance.***

REGISTRATION FORM

DATE: / /
 M D Y

SCHOOL: _____

STUDENT: _____

AGE: _____ DATE OF BIRTH: _____ / _____ /
M D Y

NAME OF PARENT(S)/GUARDIAN: _____

PERSON ENROLLING STUDENT: _____

RELATIONSHIP TO STUDENT IF OTHER THAN PARENT: _____

STUDENT'S PHYSICAL ADDRESS: _____

MAILING ADDRESS (IF DIFFERENT):

HOME TELEPHONE (INCLUDE AREA CODE):

OTHER PHONE OR FAX (IF ANY):

PARENT(S)/GUARDIAN'S PHYSICAL ADDRESS:

MAILING ADDRESS (IF DIFFERENT):

HOME TELEPHONE (INCLUDE AREA CODE):

OTHER PHONE OR FAX (IF ANY):

NATIVE LANGUAGE OF PARENT/GUARDIAN/PERSON ENROLLING STUDENT:

(If English is not the native language, please check here ____ if English is spoken and understood by the parent/guardian/person enrolling student.)

To the Person Enrolling the Student: Please complete the appropriate section A, B, C or D below, according to the situation best matching the student's circumstances:

Complete SECTION A (Domicile) if the student is living with a parent or guardian whose permanent home is the address given on page 1 of this application and is located in the district.

or

Complete SECTION B ("Affidavit" Student) if the student is living with a person domiciled in the district, other than the parent or guardian.

or

Complete SECTION C (Temporary Resident) if the student is living with a parent or guardian temporarily residing within the district.

or

Complete SECTION D (Special Circumstances) if the student's situation is not addressed by Section A, B or C or if any of the circumstances in Section D apply.

SECTION A (DOMICILE): Complete this section if the student is living with a parent or guardian whose permanent home is the address given on page 1 of this application and is located in the district. If you are the student's guardian, or will be the guardian of a student from out of state following expiration of the required 6-month waiting period, you will be asked to provide official papers proving guardianship. You will not be asked to produce "affidavit student" proofs of the type requested in Section B below.

How long have you lived in this home? _____

Do you have any present intention of moving from this home? If so, when and to where?

Do you have residences(s) elsewhere, and, if so, where are they and when do you live there?

Please list four forms of proof (see attached list) you will provide to demonstrate that the address given on page 1 of this application is your permanent home.

1. _____

2. _____

3. _____

4. _____

(Continued on next page)

SECTION A (DOMICILE) CONTINUED:

If the student's parents are domiciled in different districts, regardless of which parent has legal custody, please answer the following questions:

Is there a court order or written agreement between the parents designating the district for school attendance, and if so, where does it require the student to attend school? (You will be asked to provide a copy of this document.)

Does the student reside with one parent for the entire year? If so, with which parent and at what address?

If not, for what portion of time does the student reside with each parent and at what addresses?

If the student lives with both parents on an equal-time, alternating week/month or other similar basis, with which parent did the student reside on the last school day prior to October 16 preceding the date of this application?

Please note: No district is required, as a result of being the district of domicile for school attendance purposes where a student lives with more than one parent, to provide transportation for a student residing outside the district for part of the school year, other than transportation based upon the home of the parent domiciled within the district to the extent required by law.

If you are claiming to be an emancipated student, are you living independently in your own permanent home in the district? If yes, please describe the proofs you will provide, in addition to those demonstrating domicile, to demonstrate that you are not in the care and custody of a parent or legal guardian.

Please note: Under New Jersey law, where a dwelling is located within two or more local school districts, or bears a mailing address that does not reflect the dwelling's physical location within a municipality, the district of domicile for school attendance purposes is that of the municipality to which the resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question is paid by the owner of a multi-unit dwelling.

END OF SECTION A

SECTION B (“AFFIDAVIT” STUDENT): Complete this section if the student is living with a person domiciled in the district, other than the parent or guardian.

Is the person domiciled in the district, supporting the student without remuneration as if the student were his or her own child, keeping the student for a longer time than the school term and assuming all personal obligations for the student relative to school requirements? Please explain. (You will be asked to file a sworn statement, along with a copy of the person's lease, if a tenant, or a sworn landlord's statement, if a tenant without written lease.)

Students are not eligible to attend school as “affidavit” students unless the student’s parent or guardian is not capable of supporting or providing care for the student due to family or economic hardship, and unless it is clear that the student is not living in the district solely for purposes of receiving a public education there. Please explain the circumstances applicable in this case, with special attention to the parent/guardian’s family and/or economic hardship. (The parent/guardian will be required to file a sworn statement with documentation to support the claims made.)

Please note: A student will not be considered ineligible because required sworn statements(s) cannot be obtained, so long as evidence is presented that the underlying requirements of the law are being met.

A student will not be considered ineligible when evidence is presented that the student has no home or possibility of school attendance other than with a non-parent district resident who is acting as the sole caretaker and supporter of the student.

A student will not be considered ineligible solely because a parent or guardian provides gifts or limited contributions, financial or otherwise, toward the welfare of the student, provided that the resident keeping the student receives no payment or other remuneration from the parent or guardian for the student's actual housing and support. Receipt by the resident of social security or other similar benefits on behalf of the student do not render a student ineligible.

It is not necessary that legal guardianship or custody be obtained before a student will be considered for enrollment on an “affidavit” basis.

END OF SECTION B

SECTION C (TEMPORARY RESIDENT): Complete this section if the student is living with a parent or guardian temporarily residing within the district, even if the parent has a domicile elsewhere.

How long have you lived in this residence? _____

Do you have a domicile or residences(s) elsewhere, and, if so, where are they and when do you live there?

Please list four forms of proof (see attached list) you will provide to demonstrate that you are residing at the address given on page 1 of this application, and that such residence is not solely for the purpose of the student attending school in the district.

1. _____
2. _____
3. _____
4. _____

Please note: Under New Jersey law, where a dwelling is located within two or more local school districts, or bears a mailing address that does not reflect the dwelling's physical location within a municipality, the district of domicile for school attendance purposes is that of the municipality to which the resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question is paid by the owner of a multi-unit dwelling.

If the student's parents are domiciled in different districts, regardless of which parent has legal custody, please answer the following questions:

Is there a court order or written agreement between the parents designating the district for school attendance, and if so, where does it require the student to attend school? (You will be asked to provide a copy of this document.) _____

Does the student reside with one parent for the entire year? If so, with which parent and at what address?

If not, for what portion of time does the student reside with each parent and at what addresses?

(Continued on next page)

SECTION C (TEMPORARY RESIDENT): CONTINUED

If the student lives with both parents on an equal-time, alternating week/month or other similar basis, with which parent did the student reside on the last school day prior to October 16 preceding the date of this application?

Please note: No district is required, as a result of being the district of temporary residence for school attendance purposes where a student lives with more than one parent, to provide transportation for a student residing outside the district for part of the school year, other than transportation based upon the home of the parent residing within the district to the extent required by law.

END OF SECTION C

SECTION D (SPECIAL CIRCUMSTANCES): Please indicate if any of the following apply.

- The student is the child of a parent or guardian who has moved to another district as the result of being homeless.
- The student has been placed in the home of a district resident other than the parent or guardian by court order. (You will be required to provide a copy of the order.)
- The student has been placed in the district by the Division of Youth and Family Services acting as the student's legal guardian.
- The student is a child of a parent or guardian who previously resided in the district and is a member of the New Jersey National Guard or the United States reserves ordered to active service in time of war or national emergency.
- The student is kept in the home of a person domiciled in the district, other than the parent or legal guardian, and the parent/guardian a member of the New Jersey National Guard or the reserve component of the United States armed forces and has been ordered into active military service in the United States armed forces in time of war or national emergency. If this applies, when is the parent or guardian expected to return from active military duty?
- The student resides on federal property? Where? _____

- The student's circumstances do not appear to be addressed anywhere in this application. I understand that I will be contacted by (name of administrator or office) for further information.

END OF SECTION C

If you experience difficulties with the enrollment process, please see (name and phone number/location of administrator) for assistance.

NOTICE OF DEFECT IN APPLICATION/POTENTIAL INELIGIBILITY

(To be used in initial assessment upon presentation of student for enrollment)

DATE: _____

SCHOOL: _____

STUDENT: _____ AGE: _____

NAME OF PARENT(S)/GUARDIAN: _____

PERSON ENROLLING STUDENT: _____

RELATIONSHIP TO STUDENT IF OTHER THAN PARENT: _____

Please be advised that, although the above-named student is being accepted for enrollment on a preliminary basis, **the enrollment application you have submitted has defects as noted below. If these defects are not corrected within the specified time, you will be notified that, unless you file an appeal, the student will be removed from school.** If that occurs, you will be provided with information on how to appeal the removal to the Commissioner of Education.

On or before [DATE], please submit further evidence of:

[In each applicable area, briefly specify what is needed.]

_____ Domicile/Residency at address where you claim to live

_____ Legal guardianship or custody of student

_____ Proof that you are supporting student financially and/or that parents are incapable of caring for student due to family or economic hardship (applies only to residents enrolling students of whom they are not parents or legal guardians/custodians)

If you have any questions, please see (designated administrator) or call him/her at (phone number) between the hours of (time). The information requested above should be submitted to (name) at (address).

NOTICE OF INITIAL DETERMINATION OF INELIGIBILITY

*(To be used after more thorough review of applications for enrollment or review of currently enrolled students)
(In English and Native Language of Applicant)*

DATE: _____

SCHOOL: _____

STUDENT: _____ AGE: _____

NAME OF PARENT(S)/GUARDIAN: _____

PERSON ENROLLING STUDENT: _____

RELATIONSHIP TO STUDENT IF OTHER THAN PARENT: _____

Our review of the domicile/residency status of the above-named student indicates that the student is not entitled to a free education in the district for the reason(s) indicated below:

Domicile/Residency not in the district because:

Insufficient proof that you are supporting student financially and/or that parents are incapable of caring for student due to family or economic hardship because: *(Applies only to residents enrolling students of whom they are not parents or legal guardians/custodians)*

Other:

If you accept these reasons, the student will be removed from school in this district and you are advised that state compulsory education law requires you to ensure that any student between the ages of 6 and 16 is enrolled in public or private school or receives instruction elsewhere than at a school (home schooling). In the absence of your written indication that the student will be receiving education in compliance with that law, we will contact the school district of your domicile or residence, or the Division of Youth and Family Services (DYFS), to provide the student's name and your name/address, so as to ensure that the student receives an education as required by law.

If you do not accept these reasons, you may request a hearing before the Board of Education and the student will be permitted to continue in school until the Board makes its determination following the hearing. At the hearing, you may present additional evidence in support of your claim, and the Board will notify you in writing of its final determination. If the Board finds the student ineligible, you will be given information on how to appeal the Board's decision to the Commissioner of Education and advised of your rights and responsibilities with regard to the student's continued attendance at school, as well as of the possibility of tuition assessment

On or before (date), please contact (designated administrator) at (phone number) between the hours of (time) to indicate whether the student will be removed from school and educated elsewhere, or whether you will be requesting a hearing before the board to demonstrate that the student is entitled to attend school in this district. If we do not hear from you, the student will be removed and contact will be made to ensure compliance with compulsory education law as indicated above.

Attachment: Statement of Compliance with Compulsory Education Law

NOTICE OF FINAL INELIGIBILITY
(In English and Native Language of Applicant)

Date

Applicant:

Address where s/he claims to reside

Dear :

We have carefully reviewed the application for enrollment of (student's name) in the (name) School District, as well as all information submitted in support of the application, and have determined that (student) is ineligible to attend the schools of the district.

We have made this determination based on the following:

[Here state the specific basis on which the determination of ineligibility was made, sufficient to allow the applicant to understand the reasons for the district's decision and determine whether appeal is appropriate. Include a reference to the specific section of N.J.S.A. 18A:38-1 under which the application was decided, for example, 18A:38-1(a), domicile, or 18A:38-1(b), "affidavit" status.]

For example: An inspection of the apartment where you claim to be domiciled has revealed that your wife and children do not live there, and that you use the apartment only occasionally. Instead, we have determined that your family is, in fact, domiciled in Smith Town, where you own a home, are registered to vote, and were observed on several mornings leaving the house with your children to drive them to school in our district. Therefore, we have concluded that, in accordance with N.J.S.A. 18A:38-1(a), your children are entitled to attend school in the Smith School District, not the (Name) School District.

Another example: The information you have provided indicates that, although your niece is living with you, she is being supported by her parents, who pay for her food, clothing, medical care and incidental expenses. Therefore, she does not meet the standard established by N.J.S.A. 18A:38-1(b) for eligibility of students not living with parents or guardians to attend school in our district, since you are not supporting her gratis as if she were your own child. Instead, it appears that she should be attending school in the Smith School District, where her parents reside.

If you believe the district's determination is in error, you have the right to appeal it to the Commissioner of Education within 21 days of the date of this notice. (Student) will be permitted to attend school during this period, and to continue in attendance while the appeal is pending before the Commissioner. However, if no appeal is filed by the 21st day following the date of this notice, (student) will be removed from school, you will be asked to indicate where s/he will be educated (see below) and we may assess you tuition at the rate of (rate calculated pursuant to N.J.A.C. 6A:22-6) for each day (name) attended school during this period. Information on how to appeal to the Commissioner is included with this letter.

Please be aware that, if you appeal to the Commissioner but do not succeed in your claim, or if you abandon your appeal through withdrawal, failure to prosecute or any means other than settlement with the district, you may be assessed tuition for any period of (*student's*) ineligible attendance, including the initial 21-day filing period and the period during which the appeal was pending before the Commissioner. The Commissioner assesses such tuition, which will be calculated at the approximate rate of (*rate calculated pursuant to N.J.A.C. 6A:28-2.10*), through an order enforceable against you in Superior Court.

[If applicable, describe any discretionary policy the district may have that would permit continued attendance, with or without tuition, for students who move from the district but wish to remain for the school year or longer; and provide information on how to make arrangements for such attendance.]

If you do not intend to appeal the district's determination, please advise (*appropriate office or administrator*) as soon as possible, but in no event later than 21 days from the date of this notice, so that (*student's*) removal can be effectuated promptly and arrangements can be made for his/her education elsewhere. State statute on compulsory education requires you to ensure that any student who is between the ages of 6 and 16 is enrolled in a public or private school or receives instruction elsewhere than at a school. Therefore, unless you indicate to us by returning the form below that (*student*) will be receiving an education, we will contact the school district of your actual domicile or residence, or the Division of Youth and Family Services (DYFS), with (*student's*) name and your name and address, in order to ensure compliance with the law.

If you have any questions about this notice, please see (*designated administrator*) or call him/her at (*phone number*) between the hours of (*time*). We anticipate hearing from you regarding either (*student's*) removal and education elsewhere, or your intent to appeal the Board's determination of ineligibility to the Commissioner of Education.

Sincerely yours,

[Signature]

Chief School Administrator

Attachments: Appeal Form with Instruction Sheet
Statement of Compliance with Compulsory Education Law

STATEMENT OF COMPLIANCE WITH COMPULSORY EDUCATION LAW

My student, _____ *(Name)* _____, is being denied enrollment in the _____ *(Name)* _____ School District because it has been determined that s/he is not entitled to attend the schools of the district free of charge pursuant to *N.J.S.A. 18A:38-1*. I understand that state compulsory education law, *N.J.S.A. 18A:38-25*, requires me to enroll this student, who is between the ages of 6 and 16, in another public or private school, or to ensure that s/he receives instruction elsewhere (*home schooling*). I understand that, in the absence of my indication below that the student will be receiving education in compliance with that law, the _____ *(Name)* _____ School District will contact the school district of my apparent actual domicile or residence, or the Division of Youth and Family Services (DYFS), in order to ensure compliance with compulsory education law.

The student for whom enrollment has been denied will now be:

Attending another public school as follows: _____

Attending private school

Receiving instruction elsewhere than at a school (*home schooling*)

Print Name: _____

(Signature) _____

DIRECTIONS FOR APPEALING A LOCAL BOARD'S RESIDENCY DETERMINATION TO THE COMMISSIONER OF EDUCATION

Statute provides for appeals of school district residency determinations to be filed within **21 days of the date of the district's decision.*** Therefore, time is of the essence and persons seeking to appeal should, if necessary, receive assistance from their county offices of education. Please note that where appeal is taken from a determination of ineligibility under *N.J.S.A. 18A:38-1(b)1* ("affidavit" students), such appeal shall be filed by the resident making the claim of entitlement, **not** by the parent or legal guardian.

There are two ways in which a parent/guardian/resident/adult student may file an appeal with the Commissioner: 1) He/she may submit a standard Petition of Appeal in accordance with *N.J.A.C. 6A:3-1.3* and 1.4, or 2) in the case of a petitioner acting without legal representation ("pro se"), he/she may instead submit a letter petition in accordance with *N.J.A.C. 6A:3-8.1*. Both methods of filing are described below. In either case, petitioners should be aware that they are initiating an agency hearing procedure where they, or their counsel, will most likely be required to present testimony and evidence in support of their claim before a judge of the Office of Administrative Law (OAL). For more information about this process, petitioners are urged to visit the OAL website at <http://www.state.nj.us/oal/hearings.html>.

STANDARD PETITION OF APPEAL (N.J.A.C. 6A:3-1.3 AND 1.4)

The regulations for filing Petitions of Appeal may be obtained at a library, the local school district, the county office of education, the Department of Education's website (at <http://www.state.nj.us/njded/code/current/title6a/chap3.pdf>) or by mail from the Bureau of Controversies and Disputes (609-292-5705).

A standard Petition of Appeal includes: 1) The **petition** itself; 2) a **verification** and 3) **proof that petitioner** has served the respondent (Board of Education) with a copy of the Petition of Appeal.

Petition: A petition is a written document, submitted in original with two copies, including the following:

- a. Name, address, telephone number and fax number, if available, of the petitioner;
- b. Name and address of the respondent (Board of Education);
- c. Petitioner's allegations and specific facts supporting them;
- d. Signature of the petitioner, or his/her attorney; and
- e. Date when the petition is prepared.

Verification: A petition must verify the facts alleged. This means that the petitioner must write or type the statement contained in *N.J.A.C. 6A:3-1.4* indicating that he/she, as petitioner, attests that the facts contained in the petition are true to the best of his/her knowledge. He/she must then sign the statement and have it notarized.

Proof of Service: A copy of the petition must be served upon each respondent (*N.J.A.C. 6A:3-1.3*). In the case of residency disputes, the board of education will be served. A copy should be submitted to the office of the board secretary, or the board's attorney, if known. *The petitioner should also submit to the Bureau of Controversies and Disputes, with the Petition of Appeal, proof that respondent was served.* That proof may be:

- a. An acknowledgment of service (a "receipt") signed by the attorney for the respondent (Board), or signed and acknowledged by the respondent (Board) or its agent (e.g. the Board Secretary) indicating the address at which the respondent was served;
- b. A sworn affidavit of the person making service (mailing or delivering the petition), indicating the address at which the respondent was served;

* Where an appeal is filed within 21 days of the date of the district's decision, *N.J.S.A. 18A:38-1* provides that no child shall be denied admission during the pendency of the proceedings before the Commissioner. The child shall not be removed from school during the 21-day period in which the interested party may contest the district's decision. However, if in the judgment of the Commissioner the evidence does not support the claim of the petitioner, or if the appeal is withdrawn or abandoned, the petitioner may be assessed tuition for the student prorated to the time of the student's ineligible attendance in the school district. Appeals may be filed after expiration of the 21-day period, but the student's right to attend school during the pendency of the appeal is not guaranteed by operation of statute and the petitioner must submit an application for emergent relief in accord with *N.J.A.C. 6A:3-1.6*.

- c.A certificate of service signed by the attorney making service (mailing or delivering the petition) indicating the address at which the respondent was served;
- d.A copy of petitioner's receipt for certified mailing to respondent. The return receipt (green card) is not required for proof of service.

An original and two copies of a standard Petition of Appeal must be submitted to the address in the box below. The Bureau of Controversies and Disputes will acknowledge the petition in writing.

LETTER PETITION (N.J.A.C. 6A:3-8.1)

Petitioners who are *not* represented by an attorney ("pro se") may submit a letter petition, instead of the standard Petition of Appeal as described above,*provided that the letter contains the following information:*

- a. Petitioner's name, address, telephone number, and fax number where available;
- b.The name of the respondent board of education;
- c.A clear indication that the party is appealing a determination of ineligibility to attend school in the district based on residency or domicile, identifying the date of the district's decision, and including, where possible, a copy of the district's written determination of ineligibility; and
- d.A signed statement that the petitioning party's claim of entitlement is based upon facts which are true to the best of petitioner's knowledge and belief.

Please Note: Sample letter petition forms are available from your school district or the Office of the County Superintendent.

Appeals from *pro se* petitioners need not be submitted in triplicate or served upon the respondent district board of education. While *pro se* petitioners *may* serve their petitions on the board, **they may also effectuate service through the Bureau of Controversies and Disputes.** Upon receipt of any *pro se* residency appeal which has not been served on the board, the bureau will transmit a copy of the letter petition to the board via fax, together with notice of the board's obligation to answer the letter petition pursuant to N.J.A.C. 6A:3-1.5, and to effectuate, as required by N.J.S.A. 18A:38-1, the attendance of petitioner's child(ren) pending the outcome of the appeal.

Letter petitions must be submitted to the address in the box below. The Bureau of Controversies and Disputes will acknowledge the petition in writing.

* * * * *

ALL PETITIONS SHOULD BE SUBMITTED TO:

**Commissioner of Education
c/o Director of the Bureau of Controversies and Disputes
New Jersey State Department of Education
P.O. Box 500
Trenton, NJ 08625-0500**

A petition may be faxed, with hard copy following by mail, to 609-292-4333.

Following submission of a proper petition, the board will be required to file an answer and, in most cases, the next step will be a hearing before a judge at the Office of Administrative Law, leading to an initial decision containing the judge's recommended findings of fact and conclusions of law. The Commissioner will then review the matter and issue a final decision, which may be appealed to the State Board of Education, and thereafter to the courts.

Please Note: These instructions do not constitute legal advice, nor are they meant to take the place of applicable statute or regulation, which should be consulted by petitioners and will take precedence over these instructions if procedural issues arise in any appeal. These instructions are intended solely as an aid to preparation and submission of an appeal petition.

Prepared by
New Jersey State Department of Education
Bureau of Controversies and Disputes

PRO SE Residency Appeal
N.J.S.A. 18A:38-1/N.J.A.C. 6A:3-8.1/N.J.A.C. 6A:22

To: Commissioner of Education
c/o Director, Bureau of Controversies and Disputes
New Jersey State Department of Education
100 Riverview Plaza, P.O. Box 500
Trenton, NJ 08625

Fax: (609) 292-4333

Dear Commissioner: **(Please Print or Type)**

1. My name is _____

2. My address is: .
Number Street Town/City Zip Code

3. My phone number is (_____) _____.
Area Code Number Fax If Available

4. The _____ School District located
in _____
Town/City County

will not allow the following child/ren, who reside with me, to attend school under N.J.S.A. 18A:38-1. List name(s) of child/ren and your relationship to them (i.e., parent, legal guardian, other).

5. Give a brief explanation of why attendance is being denied, including date of district's decision.
Please attach, if possible, a copy of district's written determination. (Additional sheets may be used.)

6. With this letter, I am appealing the district's decision. My claim of entitlement is based upon facts which are true to the best of my knowledge. I understand that if the Commissioner determines the child/ren to be ineligible for a free education in this district, or finds that I have abandoned or withdrawn this appeal, I may be assessed tuition costs for the period of the child/ren's ineligible attendance.

Signature _____ Date _____

ABOUT THE NEW JERSEY STATE BAR FOUNDATION

The New Jersey State Bar Foundation, founded in 1958 as the charitable and educational arm of the New Jersey State Bar Association, is an organization dedicated to promoting free law-related education and giving all New Jersey residents a basic understanding of the legal system. Programs sponsored by the Foundation include seminars on such topics as wills, landlord-tenant matters, divorce, special education, real estate, disability law and health issues. Dedicated to providing programs for children and teachers, the Foundation sponsors mock trial competitions for elementary, middle and high school students, and training sessions for teachers on conflict resolution and peer mediation, as well as teasing and bullying. For students, the Foundation publishes a legal newspaper for kids, titled *The Legal Eagle*, and a newsletter promoting tolerance, called *Respect*. Both publications are produced three times a year.

Other publications produced by the Foundation include *Law Points for Senior Citizens*; *AIDS and the Law in New Jersey*; *Disability Law: A Legal Primer* (fourth edition), cosponsored with the Essex County Bar Association; *Students' Rights Handbook*, cosponsored with the American Civil Liberties Union of New Jersey; and *Domestic Violence: The Law and You*. Some of these publications are available in Spanish and all are available in alternative formats for individuals with disabilities. For more information or copies of program materials, visit the Foundation online at www.njsbf.org or call 1-800 FREE LAW.

This publication is provided as a public education service to help explain laws in New Jersey. It does not constitute legal advice, which can only be given by an attorney.

This booklet is made possible with funding from the IOLTA Fund of the Bar of New Jersey.



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